

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ERIC L. MEDINA,

Plaintiff and Respondent,

v.

KASANDRA M. DI PIERI,

Defendant and Appellant.

B283909

(Los Angeles County
Super. Ct. No. BC586876)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Higa, Judge. Reversed and remanded with directions.

Romero Law and Alan J. Romero for Defendant and Appellant.

Law Offices of David A. Xavier and David A. Xavier for Plaintiff and Respondent.

INTRODUCTION

Eric Medina and Kasandra Di Pieri purchased a house two months before they married and, because of Medina's poor credit, took title in Di Pieri's name. Their marriage did not last, but their dispute over the house survived and resulted in this action by Medina to obtain what he claimed was a 50 percent interest in the house.

Medina prevailed and obtained a judgment giving him a 50 percent ownership in the house, a constructive trust, and an order of partition by sale that included various credits to the parties to compensate them for money they had contributed to the purchase, maintenance, and improvement of the property. We reverse the imposition of a constructive trust and otherwise affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Medina and Di Pieri Buy a House*

Medina and Di Pieri started dating in 2007, became engaged in May 2010, and began living together in 2011. They found a house in Whittier, California and sought a loan from a federally insured financial institution. Because Medina's credit rating was "extremely low," they agreed he would contribute \$20,000 toward the purchase of the house as part of the down payment, Di Pieri would make the first 10 monthly payments on the promissory note secured by the deed of trust on the house, and then, after Medina's credit improved, she would put his name on the title. Medina transferred \$20,000 into Di Pieri's bank account to show the bank she had the money for the down

payment. Di Pieri also paid \$5,000 toward the down payment and another \$5,000 for landscaping and other initial improvements to the house.

Medina and Di Pieri purchased the house on April 25, 2012 and put the title in Di Pieri's name. Her name was also on the note and the monthly statements from the bank. According to Medina, "the loan application, purchase documents and the grant deed were all in [Di Pieri's] name due to [Medina's] inability to qualify for a loan." The monthly payment on the note was \$2,055.35.

B. *Medina and Di Pieri Get Married and Live in the House*

Medina and Di Pieri married on July 28, 2012. For the first 10 months they lived in the house, Di Pieri made the payments on the note. After that, Di Pieri and Medina jointly paid, with Di Pieri using savings and salary from her "personal checking account" to pay her portion of the monthly payments. Di Pieri continued to contribute to the monthly payments on the note until September or November 2013, when she stopped working and went back to school. At that point, Medina "took over" making the payments on the note and maintaining the property. Di Pieri also spent \$57,155 she received from her mother or her mother's trust to improve the house with a swimming pool.

C. *Medina and Di Pieri Get Divorced*

Di Pieri moved out of the house and filed for divorce in September 2014, and the family court entered a judgment of dissolution in December 2016. Di Pieri said she left because Medina was scaring her, drank a lot, and “would walk around the house cussing and slamming doors.” On the day she left, Medina told Di Pieri, “You don’t know the wrath of my intentions.”

D. *Medina Files This Action and Prevails on Most of His Causes of Action*

Medina filed this action in July 2015. In his first cause of action for breach of contract, Medina alleged he and Di Pieri entered into an oral agreement to purchase the Whittier property, with Medina contributing \$20,000, Di Pieri contributing \$10,000, and Di Pieri holding title to the property in trust for the two of them. Medina alleged Di Pieri breached the agreement by claiming, after she moved out of the house, she owned 100 percent of the property. In his second cause of action for fraud, Medina alleged Di Pieri falsely promised that, if he contributed \$20,000 toward the purchase price of the property, they “would be joint owners and each would hold an undivided 50% interest in the property” and that Di Pieri “never intended to transfer any interest in the property” to Medina.

In his third cause of action for quiet title, Medina alleged the basis of his title was “an oral contract entered into with” Di Pieri to purchase the Whittier property in her name with Medina “making the mortgage payments, the property tax payments, insurance payments, repairs and maintenance.” Medina sought to quiet title in his 50 percent interest in the property. In his fourth cause of action for imposition of

constructive trust, Medina alleged that, “[b]y reason of [Di Pieri’s] fraud,” Di Pieri was an “involuntary trustee[]” of his 50 percent interest in the Whittier property and held “the rents, issues and profits therefrom in constructive trust” for Medina. Finally, in his fifth cause of action for declaratory relief, Medina sought a judicial determination he owned 50 percent of the Whittier property, and in his sixth cause of action for partition, Medina requested partition of the property by sale.

After a non-jury trial, the trial court ruled in favor of Di Pieri and against Medina on the first cause of action for breach of contract, concluding it was barred by the statute of frauds, and the second cause of action for fraud, finding Di Pieri did not make any fraudulent misrepresentations. The court ruled in favor of Medina on his fourth cause of action for constructive trust, finding “there was a Confidential Relationship between the parties in that the parties lived together both before and after marriage at the subject property and before and after purchase of the property. There was a violation of a Trust and therefore, Civil Code [s]ections 2223 and 2224 apply to this situation and a Constructive Trust is imposed on the property to prevent unjust enrichment by [Di Pieri].” (Emphasis omitted.)

On the third cause of action for quiet title and the fifth cause of action for declaratory relief, the court ruled Medina was the owner of a 50 percent interest in the property. On the sixth cause of action for partition, the court ruled in favor of Medina and ordered “a partition by sale of the property.” The court awarded Di Pieri \$83,198 from the sale proceeds (representing credits for the \$10,000 she paid toward the down payment and for initial improvements to the house, 10 monthly payments on the promissory note, and payments for the improvement of the

property) and awarded Medina \$122,816 (representing credits for his \$20,000 contribution to the down payment plus 48 monthly payments on the promissory note). Di Pieri timely appealed from the judgment. Medina did not file a protective cross-appeal from the judgment in favor of Di Pieri on his breach of contract and fraud causes of action.

DISCUSSION

Di Pieri does not challenge the trial court's judgment in favor of Medina on the third cause of action for quiet title or the fifth cause of action for declaratory relief. Di Pieri asserts Medina "prevailed solely on his [fourth] cause of action for constructive trust," but she is incorrect. The trial court ruled in favor of Medina on his causes of action for quiet title, declaratory relief, and partition. We affirm the unchallenged parts of the judgment on the causes of action for quiet title and declaratory relief.

Regarding the sixth cause of action for partition, Di Pieri challenges the trial court's accounting of credits (which she characterizes as "damages"), but not the portion of the judgment ordering partition of the property by sale. We affirm the judgment on the partition cause of action.

Finally, Di Pieri challenges the court's judgment on the fourth cause of action imposing a constructive trust, arguing she was not in a "confidential relationship" with Medina when she acquired title to the property, she did not acquire the property fraudulently or wrongfully, and the statute of frauds precludes the imposition of a constructive trust. We agree with Di Pieri that the trial court erred in imposing a constructive trust, and we reverse that part of the judgment.

A. *An Accounting is a Proper Remedy for Partition*

Di Pieri objects to the \$122,816 credit the trial court gave Medina for the \$20,000 he paid toward the down payment on the property and the \$102,816 the court calculated he paid on the promissory note (48 monthly payments of \$2,142). Citing Code of Civil Procedure section 580,¹ Di Pieri argues Medina did not ask for these amounts in his complaint, the \$20,000 was “equalized” by the 10 monthly payments she made on the note, and the \$102,816 credit resulted in a 48-month “windfall” of “free housing costs.”

Putting aside that section 580 applies to default judgments (see *In re Marriage of Eustice* (2015) 242 Cal.App.4th 1291, 1303) and that this case went to trial, a cause of action for partition includes a request for an accounting. Partition is a statutory ““procedure for segregating and terminating common interests in the same parcel of property”” and “a “remedy much favored by the law. The original purpose of partition was to permit cotenants to avoid the inconvenience and dissension arising from sharing joint possession of land. An additional reason to favor partition is the policy of facilitating transmission of title, thereby avoiding unreasonable restraints on the use and enjoyment of property.”” (*Summers v. Superior Court* (2018) 24 Cal.App.5th 138, 142; see *Cummings v. Dessel* (2017) 13 Cal.App.5th 589, 596; *In re Marriage of Teichmann* (1984) 157 Cal.App.3d 302, 307; *Akagi v. Ishioka* (1975) 47 Cal.App.3d 426, 429.)

¹ Undesignated statutory references are to the Code of Civil Procedure.

“The governing statute is section 872.720. Subdivision (a) declares that ‘[i]f the court finds that the plaintiff is entitled to partition, it shall make an interlocutory judgment that determines the interests of the parties in the property and orders the partition of the property.’ [Citation.] The order of partition ‘shall order that the property be divided among the parties in accordance with their interests as determined in the interlocutory judgment.’” (*Summers v. Superior Court, supra*, 24 Cal.App.5th at p. 142.) “When the trial court ‘determines the interests of the parties in the property and orders the partition of the property,’ it shall decide the manner of partition ‘unless [this] is to be later determined.’ [Citation.] ‘The manner of partition may be “in kind”—i.e., physical division of the property [citation] according to the parties’ interests as determined in the interlocutory judgment. [Citations.] Alternatively, if the parties agree or the court concludes it ‘would be more equitable,’ the court may order the property sold and the proceeds divided among the parties.” (*Summers*, at p. 143; see *Cummings v. Dessel, supra*, 13 Cal.App.5th at p. 597.)

Partition is an equitable remedy that includes an accounting. (See § 872.140 “[t]he court may, in all [partition] cases, order allowance, accounting, contribution, or other compensatory adjustment among the parties according to the principles of equity”]; *Wallace v. Daley* (1990) 220 Cal.App.3d 1028, 1035 “[e]very partition action includes a final accounting according to the principles of equity for both charges and credits upon each cotenant’s interest”]; see also *Lazzarevich v. Lazzarevich* (1952) 39 Cal.2d 48, 50-51 [“a partition proceeding is equitable in nature, and . . . where one cotenant has, in good faith, expended money in making permanent improvements

necessary to the preservation of the common property, partition should not be decreed without making a suitable allowance for such expenditures”].) This is true whether the partition is by division or sale of the property (*Wallace v. Daley*, at p. 1038) and regardless whether the complaint specifically asks for an accounting (*Sears v. Rule* (1945) 27 Cal.2d 131, 149).²

The accounting the court performs in a partition action under section 872.140 includes contributions from the parties for the down payment on a property, payments on a promissory note secured by a deed of trust on the property, and improvements to the property. (See *Wallace v. Daley*, *supra*, 220 Cal.App.3d at pp. 1035-1036 [“[c]redits include expenditures in excess of the cotenant’s fractional share for necessary repairs, improvements that enhance the value of the property, taxes, payments of principal and interest on mortgages, and other liens, insurance for the common benefit, and protection and preservation of title”]; *Milian v. De Leon* (1986) 181 Cal.App.3d 1185, 1194 [“a cotenant who pays taxes, trust deed payments or other charges against the property or expends money for the preservation of the property or who, with the assent of his cotenant, makes improvements to the property is entitled to contribution from the cotenant, and on partition by sale is entitled to reimbursement for those

² In *Finney v. Gomez* (2003) 111 Cal.App.4th 527 this court held section 872.140 did not authorize the court to perform an accounting where the plaintiff was proceeding by default under section 580 and the complaint did not specifically request an accounting. (See *Finney*, at p. 539.) As noted, the judgment here is not a default judgment, and both sides had a full and fair opportunity to litigate the case through trial.

expenditures before division of the proceeds among the property owners”]; *In re Marriage of Leversee* (1984) 156 Cal.App.3d 891, 897 [in a partition action, “the court may order an equitable compensatory adjustment to compensate [a spouse] for her use of separate funds for the down payment on the residence”].) Thus, contrary to Di Pieri’s assertion, the trial court had authority to calculate and award credits to Di Pieri and Medina for their contributions to the purchase, maintenance, and improvement of the property.³

³ Neither Di Pieri nor Medina argues the trial court erred in failing to account for any community property interests in the property or the proceeds from the sale of the property. For example, some of the credits the court allocated to Di Pieri may have been community property, such as the eight monthly note payments of \$2,055.35 she made after she and Medina married and the \$4,000 wedding gift the couple received from Di Pieri’s aunt and spent on remodeling a bathroom. (See *In re Marriage of Wilson* (1974) 10 Cal.3d 851, 854; *In re Marriage of Shea* (1980) 111 Cal.App.3d 713, 717.) Similarly, some of the credits the court allocated to Medina may also have been community property, such as the 48 note payments Medina made until the couple separated in 2014. (See *In re Marriage of Mix* (1975) 14 Cal.3d 604, 612; *Beam v. Bank of America* (1971) 6 Cal.3d 12, 20; *In re Marriage of Cochran* (2001) 87 Cal.App.4th 1050, 1058.) The parties did not raise these issues in the trial court, and the record does not disclose whether they raised them in the family law case.

B. *The Trial Court Erred in Imposing a Constructive Trust*

Di Pieri argues the court erred in imposing a constructive trust on the property, or at least on Medina's 50 percent interest in the property. Her argument has merit.

A constructive trust is not a cause of action; it is a remedy. (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 277, fn. 4; see *American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1485 [constructive trust "is not 'a substantive claim for relief'"]; *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 398 ["[a] constructive trust . . . is an equitable remedy, not a substantive claim for relief"]; *Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 793 ["[a] constructive trust is not a substantive device but merely a remedy"]; *Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1023, fn. 3 ["constructive trust . . . is not an independent cause of action but merely a type of remedy for some categories of underlying wrong"].) "[A] constructive trust may only be imposed where the following three conditions are satisfied: (1) the existence of a *res* (property or some interest in property); (2) the *right* of a complaining party to that *res*; and (3) some *wrongful* acquisition or detention of the *res* by another party who is not entitled to it." (*Campbell v. Superior Court* (2005) 132 Cal.App.4th 904, 920; see *Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1069.) "A constructive trust cannot exist unless there is evidence that property has been wrongfully acquired or detained by a person not entitled to its possession."

(*In re Marriage of Chapman* (2016) 3 Cal.App.5th 719, 727.)⁴

“Before a constructive trust can be imposed, the plaintiff must prove that the defendant’s acquisition of the property was *wrongful*.” (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP*, at p. 398; see *In re Marriage of Chapman*, at p. 722.)

Di Pieri did not do anything wrong to Medina. She did not acquire or hold property of his: He agreed to put the property in her name and he benefited from their actions in misrepresenting to the lender the true owner of the property.⁵ Di Pieri asserted a claim to the property because title was in her name and because the oral agreement on which Medina based his claim to an interest in the property was, as the trial court found, unenforceable.⁶ Moreover, there was no cause of action on which

⁴ In *In re Marriage of Cassinelli* (2018) 20 Cal.App.5th 1267, 1274, fn. 2 the court stated that the United States Supreme Court in *Howell v. Howell* (2017) ___ U.S. ___, 137 S.Ct. 1400, 197 L.Ed.2d 781 “effectively overruled” *Chapman*, although on a different ground.

⁵ Which is what Di Pieri and Medina did wrong. By lying to the bank about the true identity of the purchasers and the source of the down payment to obtain more favorable loan terms, Di Pieri and Medina may have defrauded the bank and violated federal law. (See 18 U.S.C. § 1014; *U.S. v. Wells* (1997) 519 U.S. 482, 490; *U.S. v. Kurlermann* (6th Cir. 2013) 736 F.3d 439, 444.)

⁶ Di Pieri did not argue in the trial court, and does not argue on appeal, that the presumption in Evidence Code section 662 applies. (See Evid. Code, § 662 “[t]he owner of the legal title to property is presumed to be the owner of the full beneficial title”].)

the court could have imposed a constructive trust. Medina based his request for a constructive trust on Di Pieri's alleged fraudulent conduct. But Medina did not prevail on that cause of action; the court found "there are no fraudulent misrepresentations by" Di Pieri.⁷ The court found that there was a confidential relationship between Medina and Di Pieri when they purchased the property and that "[t]here was a violation of a [t]rust," but Medina did not assert a cause of action for breach of trust, fiduciary duty, or confidential relationship. (Cf. *Warren v. Merrill* (2006) 143 Cal.App.4th 96, 112 [constructive trust was a proper remedy in "an action in equity to redress a fiduciary's actual and constructive fraud"].) Therefore, although there may be little practical significance because the property will be sold in any event and Medina has been living in the house and presumably not charging himself rent, the trial court erred in imposing a constructive trust.

DISPOSITION

The judgment is reversed. The trial court is directed to vacate the judgment and enter a new judgment in favor of Di Pieri on Medina's causes of action for breach of contract, fraud, and constructive trust, and in favor of Medina on his causes of

⁷ Medina argues that, although the trial court "found no actual fraud," "there was implied constructive fraud based on [Di Pieri's] repudiation of [Medina's] interest in the property." The trial court, however, made no such finding.

action for quiet title, declaratory relief, and partition. The parties are to bear their costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

FEUER, J.